

§ 941.301 Application.

If funding is made available for public housing development, HUD will provide information about fund allocation, application deadline, and selection criteria and procedures through a Notice of Funding Availability (NOFA).

EFFECTIVE DATE NOTE: At 61 FR 38018, July 22, 1996, § 941.301 was revised. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.302 Annual contributions contract; drawdowns and advances.

(a) A PHA wishing to develop public housing shall execute an ACC or ACC amendment covering the entire amount of reserved development funds or the amount of modernization funds (under section 14 of the Act, 42 U.S.C. 1437l) it proposes to use in accordance with this part. This ACC or ACC amendment must be executed by both the PHA and HUD before funds can be provided to the PHA.

(b) Until HUD has approved a PHA's full proposal, a PHA may only draw down funds under the ACC for pre-development costs for materials and services related to proposal preparation and submission. Expenditures for pre-development costs shall not exceed three percent of the total development cost stated in the executed ACC.

(c) HUD may approve the following in writing:

(1) Amounts in excess of three percent of TDC for pre-development costs; and/or

(2) Drawdown of funds to enable a PHA to acquire a site after approval by HUD of the PHA's site acquisition proposal, in accordance with § 941.303.

(d) After HUD approval of the full proposal, the PHA may draw down additional funds under the ACC to develop the public housing units in accordance with the approved full proposal.

§ 941.303 Site acquisition proposal.

When a PHA determines that it is necessary to acquire land for development through new construction, it may spend funds authorized under this part to acquire development sites. HUD must approve a PHA's proposed use of

funds before it may acquire sites in this manner. A PHA must submit the following documents for HUD review and approval, in accordance with the standards set forth in § 941.305:

(a) *Justification.* A justification for acquiring land prior to PHA proposal approval;

(b) *Site information.* An identification and description of the proposed site, site plan, neighborhood, and evidence of PHA control of the site for at least sixty (60) days after proposal submission.

(c) *Zoning.* Evidence that construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project.

(d) *Development schedule.* A copy of the PHA development schedule, including the PHA architect estimates of the time required to complete each major development stage.

(e) *Environmental assessment.* All available environmental information on the proposed development (to expedite the HUD environmental review).

(f) *Appraisal.* An appraisal of the proposed site by an independent, state-certified appraiser.

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§ 941.304 Full proposal content.

Each full proposal shall include at a minimum the following:

(a) *Project description.* A description of the housing, including the number of units, schematic drawings of the proposed building and unit plans, outline specifications or rehabilitation work write-ups, and the types and amounts of non-dwelling space to be provided;

(b) *Description of development method.* A description of the PHA's proposed development method, and a demonstration by the PHA that it will be able to use this method successfully to develop the public housing units. If the PHA proposes to use the turnkey method, it must submit a Board-approved certification that the developer was selected as the result of a public solicitation for

proposals and that the selection was based on an objective rating system, using such factors as site location, project design, price, and developer experience. If the PHA proposes to use the acquisition method, the PHA must submit a certification by the PHA and owner that the property was not constructed with the intent that it would be sold to the PHA. If the PHA proposes to use the mixed-finance method, it should have consulted with HUD on its plans. If the PHA proposes to use the force account method to develop the public housing units, it must have already received approval from HUD of its capability to carry out the development successfully in this manner;

(c) *Site information.* An identification and description of the proposed site, site plan, neighborhood, and evidence of PHA or turnkey developer control of the site for at least sixty (60) days after proposal submission;

(d) *Project costs*—(1) *Categories of cost.* The detailed budget of the costs of developing the project, in accordance with the form prescribed by HUD. With respect to costs of demolition and relocation, the description must distinguish between costs related to existing public housing property and costs related to acquisition of a new public housing site;

(2) *Budget and payment schedule.* A budget that identifies the sources of funding for relocation benefits, and a payment schedule anticipated to be provided under a construction contract;

(e) *Appraisal.* An appraisal of the proposed site or property by an independent, state-certified appraiser;

(f) *Financial feasibility.* Identification of funds sufficient to complete the development, including a reasonable contingency;

(g) *Zoning.* Evidence that construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project;

(h) *Facilities.* A statement addressing the adequacy of existing facilities and services for the prospective occupants of the project, a description of public improvements needed to ensure the viability of the proposed project with a

description of the sources of funds available to carry out such improvements, and, if applicable, a statement addressing the minority enrollment and capacity of the school system to absorb the number of school-aged children expected to reside in the project;

(i) *Relocation.* A certification by the PHA that it will comply with all applicable Federal relocation requirements;

(j) *Life-cycle analysis.* For new construction and substantial rehabilitation, the criteria to be used in equipping the proposed project(s) with heating and cooling systems, and which shall include a life-cycle cost analysis of the installation, maintenance and operating costs of such systems pursuant to section 13 of the Act (42 U.S.C. 1437k);

(k) *Project development schedule.* A copy of the PHA development schedule, including the PHA architect or turnkey developer estimates of the time required to complete each major development stage;

(l) *Environmental assessment.* All available environmental information on the proposed development (to expedite the HUD environmental review);

(m) *Occupancy and operation policies.* Statement of all PHA policies and practices that will be used in occupancy and operation that contribute to an overall objective of ending the social and economic isolation of low income people and promoting their economic independence;

(n) *New construction certification.* If a PHA's proposal involves new construction, evidence of compliance with section 6(h) of the Act in one of the following two ways:

(1) Submission of a PHA comparison of the cost of new construction in the neighborhood where the PHA proposes to construct the housing and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood; or

(2) Certification by the PHA, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop public housing through acquisition; and

(o) *Additional HUD-requested information.* Any additional information that may be needed for HUD to determine

whether it can approve the proposal pursuant to § 941.305.

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§ 941.305 Technical processing and approval.

(a) *Standards.* HUD shall review the full proposal, submitted in accordance with § 941.304, and the site acquisition proposal, submitted in accordance with § 941.303, to determine whether each proposal complies with all statutory, executive order, and regulatory requirements applicable to public housing development including, if applicable, the comments received as a result of Intergovernmental Review. In addition, HUD shall carry out any necessary statutory and executive order reviews with respect to the proposal under review. If HUD determines that the proposal under review is acceptable, it shall notify the PHA in writing and shall forward to it for execution an ACC (or ACC amendment). If the PHA already has executed an ACC (or ACC amendment) for the entire reserved amount, HUD shall notify the PHA that it is authorized to draw down funds in accordance with § 941.302.

(b) *Approved proposal.* Units developed under this part shall be developed only in accordance with an approved proposal.

(c) *Approved amendments.* Material changes in the approved proposal, including any increase in the budget or any change in the payment schedule, require an amendment to the proposal, which must be approved by HUD. The determination of what constitutes a material change will be made by HUD.

§ 941.306 Maximum project cost.

(a) *Calculation of maximum project cost.* The maximum project cost represents the total amount of public housing capital assistance used in connection with the development of a public housing project, and includes: (1) project costs that are subject to the TDC limit (*i.e.*, Housing Construction Costs and Community Renewal Costs); and (2) project costs that are not sub-

ject to the TDC limit (*i.e.*, Additional Project Costs). The total project cost to be funded with public housing capital assistance, as set forth in the proposal and as approved by HUD, becomes the maximum project cost stated in the ACC. Upon completion of the project, the actual project cost is determined based upon the amount of public housing capital assistance expended for the project, and this becomes the maximum project cost for purposes of the ACC.

(b) *TDC limit.* (1) Public housing capital assistance may not be used to pay for Housing Construction Costs and Community Renewal Costs in excess of the TDC limit, as determined under paragraph (b)(2) of this section. However, HOPE VI grantees will be eligible to request a TDC exception for public housing and HOPE VI funds awarded in Fiscal Year 1996 and prior years. No exceptions to HCC limits will be granted within the TDC limit.

(2) *Determination of TDC limit.* HUD will determine the TDC for a public housing project as follows:

(i) *Step 1: Unit construction cost guideline.* HUD will first determine the applicable "construction cost guideline" averaging the current construction costs as listed in two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of "average" quality and the Marshal & Swift cost index for construction of "good" quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the FEDERAL REGISTER.

(ii) *Step 2: Bedroom size and structure types.* The construction cost guideline is then multiplied by the number of units for each bedroom size and structure type.

(iii) *Step 3: Elevator and non-elevator type structures.* HUD will then multiply the resulting amounts from step 2 by 1.6 for elevator type structures and by 1.75 for non-elevator type structures.

(iv) *Step 4: TDC limit.* The TDC limit for a project is calculated by adding